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IN THE COUNTY COURT, IN AND FOR
LEON COUNTY, FLORIDA

PATRICIA ORTEGA, 02 SEP -6 PM 4:13

Plaintiff/Appellant LEON COUNTY
ATTORNEY'S OFFICE

CASE NO.: 2002 CC 001980

v.

LEON COUNTY, FLORIDA; DEPARTMENT
OF PUBLIC WORKS/ANIMAL CONTROL
DIVISION; LEON COUNTY ANIMAL
CONTROL CLASSIFICATION COMMITTEE;
SALLY HAMMER; MARION HAMMER,

FILED 8-30-02
Bob Inzer
Clerk of County Court
Civil Division

Defendants/Appellees.

ORDER

Plaintiff, Patricia Ortega is the owner of two Labrador retrievers, Angel and Buster. On March 1, 2002, both of the dogs were classified as "dangerous" by the Leon County Animal Control Classification Committee. As a result of the classification the dogs were required to be permanently confined as defined by ordinance. Plaintiff seeks to contest the action taken by the Committee. On March 14, 2002, Plaintiff filed a Request for Hearing and Notice of Appeal with the Clerk of the County Court for Leon County with a copy served on the County Attorney.

On May 7, 2002, a hearing was held before this Court. At issue in that May hearing were a) what remedy is provided by statute or ordinance to Plaintiff to contest the Committee's action; b) is the remedy provided by statute or ordinance sufficient to satisfy constitutional requirements of due process of law; and c) did the Plaintiff timely take the action necessary to protect her rights under the remedy provided. A related question raised by the pleadings and at the hearing is the standing of Sally and Marion Hammer as private citizens to be parties to these proceedings.



I. WHAT REMEDY IS AVAILABLE

Several assumptions appeared clear at the hearing and were not subject to serious debate. First, the Animal Control Classification Committee's decision to declare the dogs "dangerous" and then the Committee's decision to order that the dogs be permanently confined is a governmental action that has deprived the Plaintiff of a valuable property interest. Second, the Plaintiff has a constitutional right to due process of law before such rights are taken or abridged by government. Finally, the Florida legislature and the Leon County Commission have attempted by statute and ordinance to provide a sufficient remedy to a dog owner who is not satisfied with the decision of the Committee. This Court must interpret what that remedy is and determine if Plaintiff properly and timely requested that her objections be addressed. Florida Statute 767.12(1)(d) states in material part:

(d) Once a dog is classified as a dangerous dog, the Animal Control Authority shall provide written notification to the owner by registered mail, certified hand delivery or service, and the owner may file a written request for a hearing in the county court to appeal the classification within 10 business days after receipt of a written determination of dangerous dog classification and must confine the dog in a securely fenced or enclosed area pending a resolution of the appeal. Each applicable local governing authority must establish appeal procedures that conform to this paragraph.

Leon County Ordinance 4-94(a) states in material part:

(a) If the owner or keeper of an animal classified as dangerous or aggressive disputes the order of the classification committee, he or she may within ten business days following the date of receipt of the order apply to a court of competent jurisdiction for any remedies which may be available.

The County Commission, perhaps anticipating the confusion to come from the inartfully drafted legislation, leaves up to the dog owner the choice of remedies available and the selection of the court to rule on the remedy chosen. The legislature, however, plainly states that the dog owner's recourse lies first within the County Court. The legislature's direction to County Court would be logical except that F.S. 767.12(1)(d) makes repeated references to an appeal and appellate procedure. The County Court does not have appellate jurisdiction and the statute does not explicitly confer appellate jurisdiction on the County Court. *Leon County v. Difalco*, Case No. 93-2837 (CO).

The steadfast rules of judicial statutory interpretation are that whenever possible a Court should interpret a statute so that its effect is constitutional and the Court should interpret a statute to give credence to legislative intent. Adhering to these two rules of interpretation, this Court finds first that the legislature intends for the remedy to the dog owner to be in County Court. This is clear by its directive. Because County Court lacks appellate jurisdiction to review the decision of the Animal Control Committee, this Court must assume and therefore finds that the legislature did not use the word "appeal" in F.S. 767.12 as a term of art but rather as a descriptive term to refer to the hearing to be held. If County Court is the proper forum then for F.S. 767.12 to avoid constitutional infirmity, the hearing in County Court must be a de novo hearing. Therefore, this Court holds that a full evidentiary hearing in County Court must be held to determine if Angel and Buster are "dangerous" as defined by ordinance and statute.

II. IS THE REMEDY PROVIDED ADEQUATE TO MEET CONSTITUTIONAL STANDARDS

By finding that a full evidentiary hearing in County Court is required, the second question is answered in the affirmative. A new hearing with all of the rights of appeal from any decision of

the County Court provides the citizen dog owner with the rights guaranteed by the Florida and United States Constitutions.

**III. DID THE PLAINTIFF TAKE THE ACTIONS
NECESSARY TO SECURE HER RIGHTS TO A TRAIL**

The matter is by statute in County Court. Presumably the cumulative value of the dogs is less than \$5,000.00 meaning that the case is properly in the Small Claims Division of County Court. Small Claims is the "People's Court". Pleadings in Small Claims are less formal and are considered sufficient if they fairly apprise the Defendant of the matter in controversy. The Request for Hearing and Notice of Appeal and the Amended Request for Hearing and Notice of Appeal were timely filed with the Clerk of the County Court and meet the requirements of pleading in County Court even if they were improperly styled.

IV. DO MARION AND SALLY HAMMER HAVE STANDING?

Neither the statute nor the ordinance provide for, or contemplate, the creation of a private cause of action. Private citizens other than the dog owner, may be affected by but are not proper parties to these proceedings contesting governmental action. Neither Sally nor Marion Hammer have an interest that is different from the interest of other members of the general public and therefore they lack standing. Sally Hammer and Marion Hammer are hereby dismissed as parties to this litigation.

DONE AND ORDERED at Tallahassee, Leon County, Florida this 28th day of August, 2002.


JAMES O. SHELFER
COUNTY JUDGE

2002 CC 001980

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